

Oral Testimony of Eric Miethke on Behalf of the Air Transport Association (ATA) in Support of Central Property Tax Assessment of Airline Personal Property

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Presented During the Pubic Testimony Portion of the California
Performance Review Commission Hearing
San Jose, California
August 26, 2004

Members of the Commission:

My name is Eric Miethke, a partner in the firm of Nielsen, Merksamer, Parrinello, Mueller and Naylor, LLP, today representing the Air Transport Association (ATA), which represents most of the major commercial airlines in the United States.

My written testimony sets forth the reasons for ATA's enthusiastic support for General Government Proposal 19, Centralized Assessment of Airline Property. That testimony is in your materials. I can summarize that testimony by simply saying that ATA believes that the proposal will generate the same amount of public revenue at a fraction of the current public and private cost of collection.

I do want to respond to Assessor Stone and Assessor Auerbach's comments of earlier today. Mr. Stone stated in his written testimony that GG 19 is "dated" and should be shelved because the assessors are moving forward with their own centralization plan "in consultation with the airline industry".

First, there is no "consultation". The assessors are moving ahead unilaterally with their program. Incidentally, their action only started after centralization at the state level was proposed.

Next, the assessors' program was proposed to the Legislature and was rejected on a bipartisan basis for two reasons. The

legislature thought that the assessors meeting behind closed doors, with no oversight to "divide up" the industry for assessment was not good public policy. Moreover, Legislative Counsel has opined that the proposal was unconstitutional. That opinion is included in your materials. Also included in your materials is a letter to the Senate File from Senators Cedillo and Ackerman. In pertinent part, that letter states:

"At the hearing on the bill (June 25, 2003) the committee considered and discussed potential amendments that would have accomplished the centralized assessment approach proposed by the counties, and chose not to amend the bill in that manner. Nonetheless, we are informed that the assessors have decided to unilaterally implement their plan. After consulting with Legislative Counsel, we believe it this is permitted neither by statute nor the Constitution. Furthermore, it is inconsistent with the actions of the Revenue and Taxation Committee."

We do agree with Assessor Stone on one thing. WE agree that the CPR proposal would be greatly improved by expanding it to include central assessment of *all* airline personal property, not just the fleet of planes. Although 95% of airline personal property value is in its aircraft, moving assessment to the state level would allow the airlines to file one return, have one audit and one appeal.

The assessors' attitude as assessors is understandable, but it underscores why CPR is necessary. Right now, around 50 people at the county level are doing what CPR believes can be done with 5 people. At the same time, the state currently gives more than \$50 million to county assessors' office, part of which supports those 50 people. Moving assessment responsibility to the state level mean savings in that grant program. And that should make the assessors as *taxpayers* happy.

Thank you.

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**Testimony of the Air Transport Association (ATA) in Support of
Central Property Tax Assessment of Airline Personal Property**

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Submitted to the California Performance Review Commission
San Jose, California
August 26, 2004

Co-Chairs Hauck and Kozberg, and Members of the Commission:

My name is Eric Miethke, a partner in the firm of Nielsen, Merksamer, Parrinello, Mueller and Naylor, LLP. I am here representing the Air Transport Association (ATA), which represents most of the major commercial airlines in the United States. ATA strongly supports the California Performance Review's recommendation to centralize the assessment of commercial airline personal property, including its fleet of aircraft, at the State Board of Equalization. The recommendation is consistent with Governor Schwarzenegger's charge to CPR to find ways to make government perform its function more effectively and at a lower cost. The proposal increases efficiency and reduces administrative costs for both the airlines and government, while not affecting the amount or distribution of state and local property tax revenue.

Currently, airlines are assessed annually on the full fair market value of their personal property by local property tax assessors. Airlines must file a property statement for every business location in every county in which they have tangible personal property. Some airlines file as few as 4 returns, while other file as many as 265. In every jurisdiction where they have such property, they are also subject to a separate audit and a separate appeal.

The airline industry is the only industry with multi-jurisdictional personal property that is subject to this cumbersome assessment procedure. Other industries such as railroads, gas and electric utilities, and telephone companies

all have their property "centrally assessed" on an annual basis by the Board of Equalization.

Twenty states, including major states such as New York and Pennsylvania, exempt commercial aircraft from property tax; 13 states exempt all airline personal property from property tax. Of the remaining states, many centrally assess the aircraft fleet or all airline tangible personal property.

The CPR recommends that property tax assessment responsibility for commercial aircraft be centralized at the State Board of Equalization. Such property would continue to be assessed at full fair market value annually as now, generating the same tax revenue, which would be distributed in the same manner as under current law.

The ATA additionally recommends, however, that assessment jurisdiction of the Board of Equalization should be expanded to include not only the airlines' fleet of planes, but all of their personal property. While it is true that over 95% of the value of an airline's personal property is in its fleet of planes, leaving the other 5% under local assessment would require the airlines to continue to file personal property statements in each jurisdiction where that additional property was located.

If all airline personal property were centrally assessed by the Board of Equalization, airlines would be able to file one tax return and have one appeal, and all would benefit from more uniform assessment practices by a staff with greater technical expertise. There still would be adequate provisions for audits of airline personal property returns. Finally, personalty taxed as fixtures would continue to be assessed as real property by local assessors.

The proposal would eliminate the need for multiple county assessment appeals. Both the counties and airlines will benefit from not having lengthy appeals that argue the same issue in multiple jurisdictions.

The CPR proposal would replace the current requirement for each county to individually audit the books and records of the airlines with a single, central audit. This will save the counties the expense of multiple audits, and also will save the airlines the costs associated with the multiple reviews of the same information.

Centralization eliminates the necessity for airlines to file multiple tax returns reporting the same information. Likewise the counties will not have to process the multiple filings.

The proposal would ensure aircraft are valued uniformly throughout the state. This will eliminate the county-by-county valuation subjectivity of the same assets by local assessors.

Finally, we would like to say something about state costs. The CPR proposal notes that the state would incur costs of about \$500,000 to implement the program. However, the report does not mention offsetting state savings. The state currently subsidizes local property tax assessment functions within assessors' offices. This program annually gives in excess of \$50 million in state funds to local property tax assessors for assessment, including the assessment of the same airline property by multiple counties as described above. ATA recommends that the Commission and the Administration scrutinize this program in the context of centralized assessment of airline property. The state should estimate the current subsidized cost of local assessment of airline property, and either recover that amount to offset state costs, or insist that local assessor personnel be redeployed to other revenue producing activities, such as escaped real property. On a net basis, state government will save substantially on central assessment, while generating the same amount of tax revenue for California government.

The CPR proposal would save government and industry administrative costs, and produce better results. In times of growing pressure to reduce costs of government, and to provide meaningful tax reform to taxpayers, this proposal would be a great step forward.

Thank you for the opportunity to present our views.



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January 30, 2004

Honorable Dick Ackerman
4066 State Capitol

PROPERTY TAXATION: CERTIFICATED AIRCRAFT - #21964

Dear Senator Ackerman:

You have asked whether statutory language that proposes to require the assessor's office of a single county to assess the value, for purposes of property taxation, of all the certificated aircraft of an air carrier that operates these aircraft in more than one county would violate the tax situs requirement of Section 14 of Article XIII of the California Constitution. The proposed language would amend Section 1153 of the Revenue and Taxation Code¹ as follows:²

"1153. (a) After consulting with the assessors of the counties in which aircraft of an air carrier normally make physical contact, the board shall designate for each assessment year the representative period to be used by the assessors in assessing the aircraft of the carrier.

"(b) Beginning with the 2005-06 fiscal year, at the same time that the board consults with assessors to designate the representative period for an assessment year, county assessors shall meet, confer, and designate a lead county assessor's office for each domestic air carrier operating certificated aircraft in this state in that assessment year. Annually, each domestic air carrier having a presence in California shall file, in the manner required by Section 441, a property statement with the designated lead county assessor's office that describes all of the reportable certificated aircraft owned, claimed, possessed, controlled, or managed by the air carrier as of January 1 of that year. The designated lead county

¹ All further section references are to the Revenue and Taxation Code, unless otherwise indicated.

² New language is shown in underscore.

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assessor's office shall, upon receipt of an air carrier's property statement, immediately transmit a copy of that statement to every county assessor of a county in which the air carrier operates.

"(c) For the 2005-06 fiscal year and each fiscal year thereafter, the designated lead county assessor's office responsible for receiving an air carrier's property statement shall calculate the full, unallocated market value of the air carrier's certificated aircraft.

"(d) The lead county assessor shall transmit its calculation of the full, unallocated market value of the air carrier's certificated aircraft to the assessor of each county in which the air carrier operates aircraft. The assessor of a county in which a domestic air carrier operates aircraft shall validate and allocate the market value of certificated aircraft, as determined by the lead county assessor, pursuant to the formula contained in Section 1152, and shall enroll the appropriate assessment.

"(e) For purposes of Section 469, county assessors shall designate audit teams for each of the domestic air carriers operating in this state, and an audit undertaken by the team shall be deemed made on behalf of all counties in the state in which the air carrier operates.

"(f) If a valuation is required to be changed following further review, or audit, the lead county assessor's office shall transmit the calculated changed value to the assessor of each county in which the domestic air carrier operates.

"(g) For purposes of valuation, all computer programs embedded in the hardware and circuitry of a certificated aircraft shall be reflected in the full, unallocated market value of that aircraft."

As can be seen, this proposal would amend Section 1153 to require county assessors to designate, beginning with the 2005-06 fiscal year, a "lead county assessor's office" for each air carrier that operates certificated aircraft³ in the state (proposed subd. (b), Sec. 1153). Under this proposal, this lead county assessor's office (hereafter LCAO) would solely determine the market value of an air carrier's certificated aircraft and transmit its determination of this market value to each county in which these aircraft are operated (proposed subds. (c) and (d),

³ Section 1150 defines "certificated aircraft" as follows:

"1150. As used in this article, 'certificated aircraft' means aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the 'Federal Aviation Act of 1958' (P.L. 85-726; 72 Stat. 731), while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation."

Sec. 1153). Upon receipt of this valuation, the assessor in each of these counties would apportion a certain amount of this value to his or her county, based generally upon the amount of time that these aircraft are located in that county (see Secs. 1151, 1152, 1153, and 1155), and would tax that value so apportioned (proposed subd. (d), Sec. 1153). At issue is whether these proposed assessment practices would violate Section 14 of Article XIII of the California Constitution.

By way of background, Article XIII of the California Constitution⁴ mandates that all property in the state is taxable unless exempted pursuant to its provisions or federal law (Secs. 1 and 2, Art. XIII). California courts have held that the property tax that is mandated by Section 1 of Article XIII must be imposed on an "ad valorem" basis (*City of Oakland v. Digre* (1988) 205 Cal.App.3d 99, 109-110) and that an "ad valorem property tax" is a tax from which revenue is derived "from applying a property tax rate to the assessed value of property" (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 483). Thus, the ad valorem taxation of property that is mandated by Section 1 of Article XIII requires that a rate of tax be applied to the assessed value of property (see Sec. 2202).

This mandate is implemented in statute. Subdivision (b) of Section 93 requires each county to impose an ad valorem property tax rate of 1 percent of the assessed value of the taxable property located in that county, including any taxable certificated aircraft within the county. Because certificated aircraft are movable, they are often located in more than one county during an assessment year. The Legislature has implemented formulae to allocate the assessed value of these aircraft to the various counties in which these aircraft are located during an assessment year (Secs. 1151, 1152, 1153, and 1155). The assessor of each county in which certificated aircraft are located determines the taxable value of these aircraft (see Sec. 404). Upon applying the allocation formulae, the assessor apportions some of this value to his or her county based generally upon the amount of time that these aircraft are located in that county.

The proposal would change these existing practices to require a single LCAO to assess the taxable value of all of a particular air carrier's certificated aircraft, and would require other counties in which these aircraft operate to utilize this assessed value in taxing these certificated aircraft (proposed subd. (d), Sec. 1153). Specifically, at issue here is whether the designation of a single LCAO to assess the taxable value of all of a carrier's certificated aircraft that have a tax situs in a county other than the county of the LCAO would violate the requirements of Section 14 of Article XIII.

Section 14 of Article XIII⁵ provides as follows:

⁴ All further article references are to the California Constitution, unless otherwise indicated.

⁵ The substance of Section 14 of Article XIII, prior to November 5, 1974, was contained in Section 10 of that same article; therefore, case citations regarding this constitutional provision that are dated prior to November 5, 1974, are to cases construing this predecessor constitutional provision. However, we think that the courts would construe the new provision in the same (continued...)

"SEC. 14. All property taxed by local government shall be assessed in the county, city, and district in which it is situated."

As can be seen, Section 14 of Article XIII requires that any property that is taxed by a local government be assessed in the county, city, and district in which that property is "situated."⁶

To resolve whether the proposal would violate this constitutional requirement, we turn to certain rules of construction that courts apply when construing the constitutionality of statutory provisions. It is well established that principles of construction applicable to statutes are also applicable to constitutional provisions (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 407; *Hyatt v. Allen* (1880) 54 Cal. 353, 356). A cardinal rule of statutory construction is that when the language of a statute is clear, its plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38). Moreover, in determining the constitutionality of statutes, courts presume that the Legislature adopts laws that are constitutional (*Carman v. Alvord* (1982) 31 Cal.3d 318, 332). It is axiomatic that a statute should be construed whenever possible so as to preserve its constitutionality (*Walnut Creek Manor v. Fair Employment and Housing Commission* (1991) 54 Cal.3d 245, 268).

Applying these principles to the issue at hand, we begin with the plain meaning of the relevant terms of Section 14 of Article XIII. At the outset, Section 14 of Article XIII specifies that the section only applies to property that is taxed by a local government. As previously discussed, under subdivision (b) of Section 93, each county levies a tax on certificated aircraft that are located in that county. Thus, these aircraft are taxed by a local government in the form of a county and, therefore, the requirements of Section 14 of Article XIII apply to the assessment of certificated aircraft.

Regarding these requirements, courts have held that the term "situated," as used in Section 14 of Article XIII, is synonymous with the term "situs" (*Zantrop Air Transport, Inc. v. County of San Bernardino* (1967) 246 Cal.App.2d 433, 436-437 (hereafter *Zantrop*); *Mackzum*, supra, at p. 940). In the context of property taxation, property has "situs" within the jurisdiction of a taxing agency if the property has sufficient contacts with that jurisdiction so as to confer upon that agency the power to tax that property (*Zantrop*, supra, at p. 437; see *Braniff Airways, Inc. v. Nebraska State Board of Equalization* (1954) 347 U.S. 590, 601). The situs of

(...continued)

manner, notwithstanding the new section number given that provision (see *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929, 939; hereafter *Mackzum*).

⁶ Section 19 of Article XIII requires the State Board of Equalization, rather than local assessors, to assess specified property of specified entities. Because the proposal pertains to the assessment of certificated aircraft, which are not currently required to be assessed by the board, we only consider here the requirement of Section 14 of Article XIII with respect to locally assessed property.

aircraft within the state "is in the county in which it is present on a regular and ascertainable portion of its life" (*Zantrop*, supra, at p. 437).

With respect to these situs requirements, Section 14 of Article XIII further states that all property that is taxed by a local government "shall be assessed in the county, city, or district in which it is situated" (emphasis added). In this connection, the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443; *Akter v. Anderson* (1997) 58 Cal.App.4th 1166, 1182; see Sec. 16). The verb "assess" is not defined in statute or the Constitution but the dictionary defines that verb as follows: "to determine the rate or amount of ... to determine the amount of and impose" and "to make an official valuation or estimate of (property) esp. for the purposes of taxation" (Webster's Third New International Dictionary (2002), p. 131).

Certain authorities suggest that both of these definitions of the verb "assess" apply in the context of Section 14 of Article XIII. For example, in *Zantrop*, the court held that Section 14 of Article XIII requires that property must have situs within a jurisdiction before that jurisdiction may tax that property (*Zantrop*, supra, at p. 437). This holding suggests to us that the term "assess," as used in Section 14 of Article XIII in the context of the *Zantrop* case, means "to determine the amount of and impose;" that is, a jurisdiction may not appraise property and levy a tax upon it unless that property has situs within that jurisdiction. On the other hand, Section 135 defines "assessed value" as "100 percent of full value," while Section 110.5 defines "full value" as "fair market value, full cash value, or other such value standard as prescribed by the Constitution or in this code under the authorization of the Constitution." We think these definitions suggest that the verb "assess" also means "to make an official valuation or estimate of." Thus, in the context of Section 14 of Article XIII, we think the verb "assess" means both (1) determining the amount of a property tax and imposing that tax and (2) making an official appraisal of that property's value for purposes of that tax. Therefore, we think that the phrase "shall be assessed," as used in Section 14 of Article XIII, establishes two mandates. First, a local government may levy a tax on property only if that property has situs within the jurisdiction of that local government (*Zantrop*, supra, at p. 437). Second, the official appraisal of that property's value for purposes of taxing on that property must occur in the city, county, or district where that property has situs.

Moreover, notwithstanding the use of the singular form of the nouns "the county," "the city," and "the district" in Section 14 of Article XIII, it is our view that these situs assessment mandates apply to taxable property that has more than one taxable situs within the state. In this connection, Section 14 of Article XIII expressly states that the requirement contained in the section applies to "all" property that is taxed by a local government. The adjective "all" means "that is the whole amount or quantity of" (Webster's Third New International Dictionary (2002), p. 54). Thus, we think that the phrase "all property taxed by a local government," as used in Section 14 of Article XIII, means the whole amount or quantity of property that is taxed by a local government. Therefore, Section 14 of Article XIII provides that all property that is taxed by a local government is subject to the situs assessment requirement contained in that section, even if that property has more than one taxable situs. Consequently, we conclude that there are two situs assessment mandates established by

Section 14 of Article XIII that apply to locally assessed property that has more than one taxable situs. As a result, with respect to this property, Section 14 of Article XIII mandates that (1) the only jurisdictions that may assess a tax on this property are those jurisdictions in which the property has situs, and (2) this property is required to be appraised in each county in which that property has situs.

As stated above, the proposed amendments to Section 1153 would require the assessor's office of a single county, the designated LCAO, to appraise the taxable value of all certificated aircraft of a particular air carrier (proposed subd. (c), Sec. 1153). We think that this proposal would not violate the situs appraisal requirement of Section 14 of Article XIII, if the only county in which these certificated aircraft have situs is the same county in which the LCAO is located.

On the other hand, the proposal would violate the situs appraisal requirement of Section 14 of Article XIII to the extent it would require certificated aircraft that have situs in more than one county to be appraised only by the LCAO. As we previously concluded, we think that Section 14 of Article XIII requires that locally assessed property that has more than one taxable situs be appraised in each county in which it has situs. Because the proposal would require the assessor's office of a single county to appraise certificated aircraft that have situs in more than one county, in our opinion the proposal would, under that circumstance, violate the situs appraisal requirement of Section 14 of Article XIII.

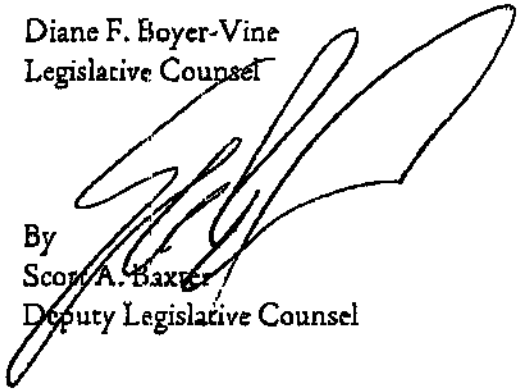
Therefore, we conclude that statutory language that proposes to require the assessor's office of a single county, for purposes of property taxation, to appraise the certificated

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aircraft of an air carrier that operates these aircraft in more than one county would violate the situs appraisal requirement of Section 14 of Article XIII of the California Constitution.⁷

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By 
Scott A. Baxter
Deputy Legislative Counsel

SAB:mfo

⁷ As previously stated, this conclusion pertains only to property that is locally assessed. Thus, we have not addressed whether the requirement of Section 14 of Article XIII applies to property subject to assessment pursuant to Section 19 of Article XIII (see fn. 6. *supra*).

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August 24, 2004

The Honorable John Burton
President pro Tempore
California State Senate
State Capitol
Sacramento, CA 95814

Re: SB 593 (Ackerman)

Dear Senator Burton:

This is to indicate our understanding and recollection of the Revenue and Taxation Committee's hearing on SB 593 (Ackerman) on June 25, 2003. The bill was intended to require that the personal property of airlines (primarily aircraft) be assessed by the Board of Equalization.

County assessors opposed this plan, and suggested, alternatively, that county assessors develop a centralized assessment and appeal procedure under which (quoting from the committee analysis) "each airline would be assigned to a single county assessor - the "lead assessor" for that airline. The lead assessor would value all aircraft operated by that airline, and share the assessment information with all counties into which that airline flies. The lead assessor's county would also be responsible for hearing appeals made by that airline. And audits of airline property would be conducted by a single team of auditors, rather than separate audits conducted by each county."

However, committee staff were orally informed by Legislative Counsel that this approach would probably be found to be unconstitutional, as the Constitution requires that all property be assessed by the county assessor of the county within which the property is located. Subsequently, Senator Ackerman requested and received a written opinion from Legislative Counsel to the same effect.

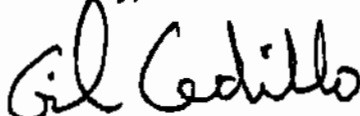
Senator Burton

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August 24, 2004

At the hearing on the bill (June 25, 2003) the committee considered and discussed potential amendments that would have accomplished the centralized assessment approach proposed by the counties, and chose not to amend the bill in that manner. Nonetheless, we are informed that the assessors have decided to unilaterally implement their plan. After consulting with Legislative Counsel, we believe this is permitted neither by statute nor the Constitution. Furthermore, it is inconsistent with the actions of the Revenue and Taxation Committee.

Sincerely,



GILBERT CEDILLO, Chair
Senate Revenue and Taxation Committee



DICK ACKERMAN
Senate Republican Leader